

1-1 By: Harris, Lucio, Nelson S.B. No. 1150  
1-2 (In the Senate - Filed March 8, 2005; March 21, 2005, read  
1-3 first time and referred to Committee on State Affairs;  
1-4 May 13, 2005, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 7, Nays 0; May 13, 2005,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1150 By: Harris

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to parental consent for the performance of an abortion;  
1-11 providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 33, Family Code, is amended by adding  
1-14 Section 33.0011 to read as follows:

1-15 Sec. 33.0011. ALTERNATIVE APPLICABILITY OF THIS CHAPTER AND  
1-16 CHAPTER 34. Notwithstanding the provisions of this chapter, a  
1-17 person who complies with the provisions of Chapter 34 satisfies the  
1-18 requirements and duties imposed under this chapter.

1-19 SECTION 2. Subtitle A, Title 2, Family Code, is amended by  
1-20 adding Chapter 34 to read as follows:

1-21 CHAPTER 34. CONSENT TO ABORTION

1-22 SUBCHAPTER A. GENERAL PROVISIONS

1-23 Sec. 34.001. DEFINITIONS. In this chapter:

1-24 (1) "Abortion" means the use of any means to terminate  
1-25 the pregnancy of a female known by the attending physician to be  
1-26 pregnant, with the intention that the termination of the pregnancy  
1-27 by those means will with reasonable likelihood cause the death of  
1-28 the fetus. This definition, as applied in this chapter, applies  
1-29 only to an unemancipated minor known by the attending physician to  
1-30 be pregnant and may not be construed to limit a minor's access to  
1-31 contraceptives.

1-32 (2) "Fetus" means an individual human organism from  
1-33 fertilization until birth.

1-34 (3) "Guardian" means a court-appointed guardian of the  
1-35 person of the minor.

1-36 (4) "Physician" means an individual licensed to  
1-37 practice medicine in this state.

1-38 (5) "Unemancipated minor" includes a minor who:

1-39 (A) is unmarried; and

1-40 (B) has not had the disabilities of minority  
1-41 removed under Chapter 31.

1-42 Sec. 34.002. APPLICABILITY OF OTHER LAW. A person or  
1-43 physician who complies with this chapter satisfies the requirements  
1-44 and duties imposed under Chapter 33.

1-45 [Sections 34.003-34.050 reserved for expansion]

1-46 SUBCHAPTER B. CONSENT TO ABORTION

1-47 Sec. 34.051. CONSENT REQUIRED. (a) A physician may not  
1-48 perform an abortion on a pregnant unemancipated minor unless:

1-49 (1) a parent, managing conservator, or  
1-50 court-appointed guardian of the minor consents in a written  
1-51 affidavit to an abortion and submits a valid governmental record of  
1-52 identification to verify the identity of the person;

1-53 (2) the judge of a court having probate jurisdiction,  
1-54 the judge of a county court at law, the judge of a district court,  
1-55 including a family district court, or a court of appellate  
1-56 jurisdiction issues an order authorizing the physician to perform  
1-57 an abortion as provided by Subchapter C or D;

1-58 (3) a probate court, county court at law, district  
1-59 court, including a family district court, or court of appeals, by  
1-60 its inaction, constructively authorizes the physician to perform an  
1-61 abortion as provided by Subchapter C or D; or

1-62 (4) the physician performing the abortion:

1-63 (A) concludes that on the basis of the

2-1 physician's good faith clinical judgment, a condition exists that  
 2-2 complicates the medical condition of the pregnant minor and  
 2-3 necessitates the immediate abortion of her pregnancy to avert her  
 2-4 death or to avoid a serious risk of substantial and irreversible  
 2-5 impairment of a major bodily function; and

2-6 (B) certifies in writing to the Department of  
 2-7 State Health Services and in the patient's medical record the  
 2-8 medical indications supporting the physician's judgment that the  
 2-9 circumstances described by Paragraph (A) exist.

2-10 (b) A physician who performs an abortion may execute for  
 2-11 inclusion in a minor's medical record an affidavit stating that,  
 2-12 according to the best information and belief of the physician,  
 2-13 consent has been provided as required by this section. Execution of  
 2-14 an affidavit under this subsection creates a presumption that the  
 2-15 requirements of this section have been satisfied.

2-16 (c) A physician who performs an abortion with the consent  
 2-17 required by Subsection (a)(1) shall retain in the physician's  
 2-18 files:

2-19 (1) the written affidavit of the parent, managing  
 2-20 conservator, or guardian; and

2-21 (2) a copy of the identification submitted by the  
 2-22 person under that subsection.

2-23 (d) The Department of State Health Services shall prepare a  
 2-24 form to be used for making the certification required by Subsection  
 2-25 (a)(4).

2-26 Sec. 34.052. CONFIDENTIALITY OF CERTIFICATION. (a) A  
 2-27 certification required by Section 34.051(a)(4) is confidential and  
 2-28 privileged and is not subject to disclosure under Chapter 552,  
 2-29 Government Code, or to discovery, subpoena, or other legal process.

2-30 (b) Personal or identifying information about a minor,  
 2-31 including her name, address, or social security number, may not be  
 2-32 included in a certification under Section 34.051(a)(4).

2-33 Sec. 34.053. AFFIDAVIT OF PHYSICIAN. (a) A physician may  
 2-34 execute for inclusion in the minor's medical record an affidavit  
 2-35 stating that, after reasonable inquiry, it is the belief of the  
 2-36 physician that:

2-37 (1) the minor has made an application or filed a notice  
 2-38 of an appeal with a court under this chapter;

2-39 (2) the deadline for court action imposed by this  
 2-40 chapter has passed; and

2-41 (3) the physician has been notified that the court has  
 2-42 not denied the application or appeal.

2-43 (b) A physician who in good faith has executed an affidavit  
 2-44 under Subsection (a) may rely on the affidavit and may perform the  
 2-45 abortion as if the court had issued an order granting the  
 2-46 application or appeal.

2-47 Sec. 34.054. RECORDS. A physician must keep medical  
 2-48 records on a minor to whom this chapter applies in compliance with  
 2-49 the rules adopted by the Texas State Board of Medical Examiners  
 2-50 under Section 153.003, Occupations Code.

2-51 Sec. 34.055. CRIMINAL PENALTY FOR VIOLATION OF SUBCHAPTER.  
 2-52 (a) In this section:

2-53 (1) "Defense" has the meaning and application assigned  
 2-54 by Section 2.03, Penal Code.

2-55 (2) "Intentionally" has the meaning assigned by  
 2-56 Section 6.03(a), Penal Code.

2-57 (b) A physician who intentionally performs an abortion on a  
 2-58 pregnant unemancipated minor in violation of this subchapter  
 2-59 commits an offense. An offense under this subsection is punishable  
 2-60 by a fine not to exceed \$10,000.

2-61 (c) It is a defense to prosecution under this section that  
 2-62 the minor falsely represented her age or identity to the physician  
 2-63 to be at least 18 years of age by displaying an apparently valid  
 2-64 governmental record of identification such that a reasonable person  
 2-65 under similar circumstances would have relied on the  
 2-66 representation.

2-67 (d) The defense provided by Subsection (c) does not apply if  
 2-68 the physician is shown to have had independent knowledge of the  
 2-69 minor's actual age or identity or failed to use due diligence in

3-1 determining the minor's age.  
 3-2 Sec. 34.056. TRIAL OF OFFENSE. (a) In relation to the  
 3-3 trial of an offense under Section 34.055 in which the conduct  
 3-4 charged involves a conclusion made by the physician under Section  
 3-5 34.051(a)(4), the defendant may seek a hearing before the Texas  
 3-6 State Board of Medical Examiners on whether the physician's conduct  
 3-7 was necessary to avert the death of the minor or to avoid a serious  
 3-8 risk of substantial and irreversible impairment of a major bodily  
 3-9 function.  
 3-10 (b) The findings of the Texas State Board of Medical  
 3-11 Examiners under this section are admissible on that issue in the  
 3-12 trial of the defendant.  
 3-13 (c) Notwithstanding any other reason for a continuance  
 3-14 provided under the Code of Criminal Procedure or other law, on  
 3-15 motion of the defendant, the court shall delay the beginning of the  
 3-16 trial for not more than 30 days to permit a hearing under Subsection  
 3-17 (a) to take place.  
 3-18 [Sections 34.057-34.100 reserved for expansion]  
 3-19 SUBCHAPTER C. COURT ORDER AUTHORIZING ABORTION  
 3-20 Sec. 34.101. APPLICATION FOR COURT ORDER. (a) A pregnant  
 3-21 minor who wishes to have an abortion without the consent of one of  
 3-22 her parents, her managing conservator, or her guardian may file an  
 3-23 application for a court order authorizing a physician to perform an  
 3-24 abortion without the consent of either of her parents or a managing  
 3-25 conservator or guardian.  
 3-26 (b) The application may be filed in any county court at law,  
 3-27 court having probate jurisdiction, or district court, including a  
 3-28 family district court, in this state.  
 3-29 (c) The application must be made under oath and include:  
 3-30 (1) a statement that the minor is pregnant;  
 3-31 (2) a statement that the minor is unmarried, is under  
 3-32 18 years of age, and has not had her disabilities removed under  
 3-33 Chapter 31;  
 3-34 (3) a statement that the minor wishes to have an  
 3-35 abortion without the consent of either of her parents or a managing  
 3-36 conservator or guardian; and  
 3-37 (4) a statement as to whether the minor has retained an  
 3-38 attorney and, if she has retained an attorney, the name, address,  
 3-39 and telephone number of the attorney.  
 3-40 (d) The clerk of the court shall deliver a courtesy copy of  
 3-41 the application made under this section to the judge who is to hear  
 3-42 the application.  
 3-43 (e) The clerk of the supreme court shall prescribe the  
 3-44 application form to be used by the minor filing an application under  
 3-45 this section.  
 3-46 Sec. 34.102. GUARDIAN AD LITEM AND ATTORNEY APPOINTMENTS.  
 3-47 (a) The court shall appoint a guardian ad litem for the applicant  
 3-48 minor.  
 3-49 (b) The court may appoint to serve as guardian ad litem:  
 3-50 (1) a person who may consent to treatment for the minor  
 3-51 under Sections 32.001(a)(1)-(3);  
 3-52 (2) a psychiatrist or an individual licensed or  
 3-53 certified as a psychologist under Chapter 501, Occupations Code;  
 3-54 (3) an appropriate employee of the Department of  
 3-55 Family and Protective Services;  
 3-56 (4) a member of the clergy; or  
 3-57 (5) another appropriate person selected by the court.  
 3-58 (c) If the minor has not retained an attorney, the court  
 3-59 shall appoint an attorney to represent the minor.  
 3-60 (d) If the guardian ad litem is an attorney admitted to the  
 3-61 practice of law in this state, the court may appoint the guardian ad  
 3-62 litem to serve as the minor's attorney.  
 3-63 Sec. 34.103. COURT PROCEEDING. (a) The court shall fix a  
 3-64 time for a hearing on an application filed under Section 34.101 and  
 3-65 shall keep a record of all testimony and other oral proceedings in  
 3-66 the action.  
 3-67 (b) The court shall enter judgment on the application  
 3-68 immediately after the hearing under Subsection (a) is concluded.  
 3-69 (c) The court shall rule on an application submitted under

4-1 Section 34.101 and shall issue written findings of fact and  
4-2 conclusions of law not later than 5 p.m. on the second business day  
4-3 after the date the application is filed with the court.

4-4 (d) On request by the minor, the court shall grant an  
4-5 extension of the period specified by Subsection (c). If a request  
4-6 for an extension is made, the court shall rule on an application and  
4-7 shall issue written findings of fact and conclusions of law not  
4-8 later than 5 p.m. on the second business day after the date the  
4-9 minor states she is ready to proceed to hearing.

4-10 (e) Proceedings under this section shall be given  
4-11 precedence over other pending matters to the extent necessary to  
4-12 assure that the court reaches a decision promptly.

4-13 (f) The court shall determine by a preponderance of the  
4-14 evidence:

4-15 (1) whether the minor is mature and sufficiently well  
4-16 informed to make an abortion decision without the consent of either  
4-17 of her parents or a managing conservator or guardian;

4-18 (2) whether obtaining the consent of either of her  
4-19 parents or a managing conservator or guardian would not be in the  
4-20 best interest of the minor; or

4-21 (3) whether obtaining the consent of either of her  
4-22 parents or a managing conservator or guardian may lead to physical,  
4-23 sexual, or emotional abuse of the minor.

4-24 (g) If the court finds that any of the requirements of  
4-25 Subsection (f) are met, the court shall enter an order authorizing a  
4-26 physician to perform the abortion without the consent required  
4-27 under Section 34.051(a)(1) and shall execute the required forms.

4-28 (h) If the court finds that the requirements of Subsection  
4-29 (f) are not met, the court may not authorize a physician to perform  
4-30 an abortion without the consent required under Section  
4-31 34.051(a)(1).

4-32 (i) If the court fails to rule on the application and issue  
4-33 written findings of fact and conclusions of law within the period  
4-34 specified by Subsection (c) or (d), the application is deemed to be  
4-35 granted and the physician may perform the abortion as if the court  
4-36 had issued an order authorizing the minor to consent to the  
4-37 performance of the abortion without the consent required under  
4-38 Section 34.051(a)(1).

4-39 Sec. 34.104. PROHIBITED NOTIFICATION; ANONYMITY. (a) The  
4-40 court may not notify a parent, managing conservator, or guardian  
4-41 that the minor is pregnant or that the minor wants to have an  
4-42 abortion.

4-43 (b) The court proceedings under this subchapter shall be  
4-44 conducted in a manner that protects the anonymity of the minor. The  
4-45 application and all other court documents pertaining to the  
4-46 proceedings are confidential and privileged and are not subject to  
4-47 disclosure under Chapter 552, Government Code, or to discovery,  
4-48 subpoena, or other legal process. The minor may file the  
4-49 application using a pseudonym or using only her initials. The  
4-50 supreme court may adopt rules to allow confidential docketing of an  
4-51 application filed under this subchapter.

4-52 Sec. 34.105. CONFIDENTIALITY OF COURT ORDER. An order of  
4-53 the court issued under this subchapter is confidential and  
4-54 privileged and is not subject to disclosure under Chapter 552,  
4-55 Government Code, or discovery, subpoena, or other legal process.  
4-56 The order may not be released to any person except:

- 4-57 (1) the pregnant minor;
- 4-58 (2) the pregnant minor's guardian ad litem;
- 4-59 (3) the pregnant minor's attorney;
- 4-60 (4) another person designated to receive the order by  
4-61 the minor; or

4-62 (5) a governmental agency or attorney in a criminal or  
4-63 administrative action seeking to assert or protect the interest of  
4-64 the minor.

4-65 Sec. 34.106. FEES AND COSTS. A filing fee is not required  
4-66 of and court costs may not be assessed against a minor filing an  
4-67 application under this subchapter.

4-68 [Sections 34.107-34.150 reserved for expansion]

## SUBCHAPTER D. APPEAL OF COURT ORDER

5-1                   Sec. 34.151. APPEAL. (a) A minor whose application under  
 5-2                   Subchapter C is denied may appeal to the court of appeals having  
 5-3                   jurisdiction over civil matters in the county in which the  
 5-4                   application was filed.

5-5                   (b) On receipt of a notice of appeal under this section, the  
 5-6                   clerk of the court that denied the application shall deliver a copy  
 5-7                   of the notice of appeal and record on appeal to the clerk of the  
 5-8                   court of appeals.

5-9                   (c) On receipt of the notice and record, the clerk of the  
 5-10                  court of appeals shall place the appeal on the docket of the court.

5-11                  (d) The clerk of the supreme court shall prescribe the  
 5-12                  notice of appeal form to be used by the minor appealing a judgment  
 5-13                  under this subchapter.

5-14                  Sec. 34.152. TIME FOR APPEAL. (a) The court of appeals  
 5-15                  shall rule on an appeal under this subchapter not later than 5 p.m.  
 5-16                  on the second business day after the date the notice of appeal is  
 5-17                  filed with the court that denied the application.

5-18                  (b) On request by the minor, the court shall grant an  
 5-19                  extension of the period specified by this section.

5-20                  (c) If a request for an extension is made, the court shall  
 5-21                  rule on the appeal not later than 5 p.m. on the second business day  
 5-22                  after the date the minor states she is ready to proceed.

5-23                  (d) If the court of appeals fails to rule on the appeal  
 5-24                  within the period specified by this section, the appeal is deemed to  
 5-25                  be granted and the physician may perform the abortion as if the  
 5-26                  court had issued an order authorizing the minor to consent to the  
 5-27                  performance of the abortion without the consent required under  
 5-28                  Section 34.051(a)(1).

5-29                  Sec. 34.153. PRECEDENCE. Proceedings under this subchapter  
 5-30                  shall be given precedence over other pending matters to the extent  
 5-31                  necessary to assure that the court reaches a decision promptly.

5-32                  Sec. 34.154. NOTIFICATION PROHIBITED; ANONYMITY. (a) The  
 5-33                  court of appeals may not notify a parent, managing conservator, or  
 5-34                  guardian that the minor is pregnant or that the minor wants to have  
 5-35                  an abortion. The court of appeals proceeding shall be conducted in  
 5-36                  a manner that protects the anonymity of the minor.

5-37                  (b) The application and all other court documents and  
 5-38                  reports shall protect the anonymity of the minor.

5-39                  (c) The supreme court may adopt rules to allow confidential  
 5-40                  docketing of an appeal under this subchapter.

5-41                  Sec. 34.155. CONFIDENTIALITY OF APPEAL. An order of the  
 5-42                  court of appeals issued under this subchapter is confidential and  
 5-43                  privileged and is not subject to disclosure under Chapter 552,  
 5-44                  Government Code, or discovery, subpoena, or other legal process.  
 5-45                  The court order may not be released to any person except:

5-46                  (1) the pregnant minor;  
 5-47                  (2) the pregnant minor's guardian ad litem;  
 5-48                  (3) the pregnant minor's attorney;  
 5-49                  (4) another person designated to receive the ruling by  
 5-50                  the minor; or

5-51                  (5) a governmental agency or attorney in a criminal or  
 5-52                  administrative action seeking to assert or protect the interest of  
 5-53                  the minor.

5-54                  Sec. 34.156. FEES AND COSTS. A filing fee is not required  
 5-55                  of and court costs may not be assessed against a minor filing an  
 5-56                  appeal under this subchapter.

5-57                  Sec. 34.157. EXPEDITED APPEAL. An expedited confidential  
 5-58                  appeal shall be available to any pregnant minor to whom a court of  
 5-59                  appeals denies an order authorizing the minor to consent to the  
 5-60                  performance of an abortion without the consent required under  
 5-61                  Section 34.051(a)(1).

5-62                  [Sections 34.158-34.200 reserved for expansion]

## SUBCHAPTER E. IMMUNITY; COSTS; DUTIES

5-63                  Sec. 34.201. GUARDIAN AD LITEM IMMUNITY. (a) A guardian  
 5-64                  ad litem appointed under this chapter and acting in the course and  
 5-65                  scope of the appointment is not liable for damages arising from an  
 5-66                  act or omission of the guardian ad litem committed in good faith.

5-67                  (b) The immunity granted by this section does not apply if  
 5-68                    
 5-69

6-1 the conduct of the guardian ad litem is committed in a manner  
6-2 described by Section 107.009(b).

6-3 Sec. 34.202. COSTS PAID BY STATE. (a) A court acting under  
6-4 Subchapter C or D may issue an order requiring the state to pay:

6-5 (1) the costs of any attorney ad litem and any guardian  
6-6 ad litem appointed for the minor;

6-7 (2) notwithstanding Sections 34.106 and 34.156, the  
6-8 costs of court associated with the application or appeal; and

6-9 (3) any court reporter's fees incurred.

6-10 (b) An order issued under Subsection (a) must be directed to  
6-11 the comptroller, who shall pay the amount ordered from funds  
6-12 appropriated to the Department of State Health Services.

6-13 Sec. 34.203. PHYSICIAN'S DUTY TO REPORT ABUSE OF A MINOR;

6-14 INVESTIGATION AND ASSISTANCE. (a) A physician who has reason to  
6-15 believe that a minor has been or may be physically or sexually  
6-16 abused by a person responsible for the minor's care, custody, or  
6-17 welfare, as that term is defined by Section 261.001, shall  
6-18 immediately report the suspected abuse to the Department of Family  
6-19 and Protective Services and shall refer the minor to the department  
6-20 for services or intervention that may be in the best interest of the  
6-21 minor.

6-22 (b) The Department of Family and Protective Services shall  
6-23 investigate suspected abuse reported under this section and, if  
6-24 appropriate, shall assist the minor in making an application with a  
6-25 court under Subchapter C.

6-26 Sec. 34.204. OTHER REPORTS OF SEXUAL ABUSE OF A MINOR. A  
6-27 court or the guardian ad litem or attorney ad litem for the minor  
6-28 shall report conduct reasonably believed to violate Section 22.011,  
6-29 22.021, or 25.02, Penal Code, based on information obtained during  
6-30 a confidential court proceeding held under this chapter to:

6-31 (1) any local or state law enforcement agency;

6-32 (2) the Department of Family and Protective Services,  
6-33 if the alleged conduct involves a person responsible for the care,  
6-34 custody, or welfare of the child;

6-35 (3) the state agency that operates, licenses,  
6-36 certifies, or registers the facility in which the alleged conduct  
6-37 occurred, if the alleged conduct occurred in a facility operated,  
6-38 licensed, certified, or registered by a state agency; or

6-39 (4) an appropriate agency designated by the court.

6-40 Sec. 34.205. CONFIDENTIALITY. Notwithstanding any other  
6-41 law, information obtained by the Department of Family and  
6-42 Protective Services or another entity under Section 34.203 or  
6-43 34.204 is confidential except to the extent necessary to prove a  
6-44 violation of Section 22.011, 22.021, or 25.02, Penal Code.

6-45 Sec. 34.206. INFORMATION RELATING TO JUDICIAL BYPASS.

6-46 (a) The Department of State Health Services shall produce and  
6-47 distribute informational materials that explain the rights of a  
6-48 minor under this chapter.

6-49 (b) The materials provided by the department must:

6-50 (1) explain the procedures established by Subchapters  
6-51 C and D;

6-52 (2) be made available in English and in Spanish; and

6-53 (3) provide information relating to alternatives to  
6-54 abortion and health risks associated with abortion.

6-55 SECTION 3. (a) The Supreme Court of Texas as soon as  
6-56 practical after the effective date of this Act shall adopt the rules  
6-57 necessary to ensure the proceedings under Subchapters C and D,  
6-58 Chapter 34, Family Code, as added by this Act, are conducted in a  
6-59 manner that protects the anonymity of the minor and have sufficient  
6-60 precedence over all other pending matters to ensure promptness of  
6-61 disposition.

6-62 (b) The clerk of the Supreme Court of Texas shall adopt the  
6-63 application form and notice of appeal form required under Sections  
6-64 34.101 and 34.151, Family Code, as added by this Act, not later than  
6-65 December 15, 2005.

6-66 (c) The executive commissioner of the Health and Human  
6-67 Services Commission shall adopt the form required for making a  
6-68 certification under Section 34.051, Family Code, as added by this  
6-69 Act, not later than December 1, 2005.

7-1 SECTION 4. Chapter 34, Family Code, as added by this Act,  
7-2 applies only to an abortion performed on or after January 1, 2006.  
7-3 An abortion performed before that date is governed by the law as it  
7-4 existed immediately before the effective date of this Act, and that  
7-5 law is continued in effect for that purpose.

7-6 SECTION 5. (a) Chapter 34, Family Code, as added by this  
7-7 Act, applies only to an offense committed on or after January 1,  
7-8 2006. For the purposes of this section, an offense is committed  
7-9 before January 1, 2006, if any element of the offense occurs before  
7-10 that date.

7-11 (b) An offense committed before January 1, 2006, is governed  
7-12 by the law in effect when the offense was committed, and the former  
7-13 law is continued in effect for that purpose.

7-14 SECTION 6. (a) Except as provided by Subsection (b), this  
7-15 Act takes effect September 1, 2005.

7-16 (b) Section 34.055, Family Code, as added by this Act, takes  
7-17 effect January 1, 2006.

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